

**SETTLEMENT AGREEMENT**  
**FOR SETTLEMENT PURPOSES ONLY**

**I. PARTIES**

This Settlement Agreement (hereinafter the "Agreement") is entered into by and between the STATE of **MICHIGAN** (hereinafter the "STATE") and WAL-MART Stores, Inc. (hereinafter "WAL-MART") and are collectively referred to as the "Parties."

The Parties now agree as follows:

**II. PREAMBLE**

- A. WAL-MART is an international retail merchandising company operating retail pharmacies in forty-nine states in the United States.
- B. Concurrent with this Agreement, WAL-MART is entering into a Settlement Agreement with the United States of America, acting through its Department of Justice (the "Department of Justice") and the Office of the Inspector General ("OIG") of the United States Department of Health and Human Services, the Office of Personnel Management which administers the Federal Employee Health Benefits Program ("FEHBP"), and the Tricare Management Activity ("TRICARE") (formerly known as the Office of the Civilian Health and Medical Program of the Uniform Services, ("OCHAMPUS")) (collectively the "United States") and with similar settlement agreements with numerous other states. Collectively, this Agreement and the agreements referred to in this paragraph address the United States' and the

Participating States' civil or administrative claims against WAL-MART involving the billing of partially-filled prescriptions, as if they were full prescriptions, to the Participating States' respective Medicaid programs and to TRICARE and FEHBP for the time period January 1, 1990 through December 31, 2000, which are further described in paragraph C.

- C. The STATE contends that it sustained damages between January 1, 1990 and December 31, 2000 because WAL-MART received full payment from the STATE's Medicaid program for prescriptions that were only partially-filled because of a stock shortfall. The conduct specified above in this paragraph is hereinafter referred to as the "Covered Conduct."
- D. WAL-MART denies the allegations set forth in paragraph C above, and denies that it is liable under the False Claims Act, 31 U.S.C. Sections 3729-3733, or any other civil or administrative cause of action for the knowing submission of claims to the Medicaid, FEHBP and TRICARE programs for partially-filled prescriptions, as if they were full prescriptions.
- E. In order to avoid the disruption, delay, uncertainty, inconvenience, and expense of protracted litigation of these claims, the Parties have agreed to a full and final settlement as set forth below.

### **III. TERMS AND CONDITIONS**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

#### **OBLIGATIONS OF WAL-MART**

- 1. WAL-MART agrees to pay to the United States and the Participating States the maximum collective sum of \$2,866,904.00 (the "Settlement Amount"). The United States, in

consultation with the Participating States, will determine the distribution of the Settlement Amount to the United States, the Participating States, and other parties. The Participating States are identified on Exhibit "A" to this Agreement.

2. (a) Within three business days of the Effective Date of the federal settlement agreement, WAL-MART shall deposit the Total State Settlement Amount in an interest-bearing escrow account under the custody and control of the State of New York Medicaid Fraud Control Unit, which shall act as Escrow Agent and shall retain such funds until their release in accordance with the payment terms set forth in (b).
- (b) The STATE shall be entitled to disbursement of its Individual State Settlement Amount from the escrow account ten days after receipt by the Escrow Agent of a copy of this Agreement executed by both the STATE and WAL-MART; provided, however, that the STATE shall not be entitled to disbursement of the Individual State Settlement Amount until the Escrow Agent has received fully executed state settlement agreements from all those states identified on Exhibit "B" (the "Threshold States") or whenever the State Negotiating team and WAL-MART mutually agree in writing. Any escrowed funds not disbursed within 200 days after the Escrow Agent has received the Total State Settlement Amount shall be disbursed to WAL-MART.
3. The parties agree that no portion of the STATE's Share of the Settlement Amount is subject to any Relator's fees or recoveries.
4. WAL-MART has entered into a Corporate Integrity Agreement ("CIA") with the OIG. WAL-MART will, consistent with the terms of the CIA, upon execution of the CIA,

implement its obligations thereunder. The STATE shall be entitled to request and review all reports, and have access to all information that WAL-MART is required to report, produce or maintain pursuant to the CIA, either through OIG or directly from WAL-MART.

#### **OBLIGATIONS OF THE STATE**

5. The total Settlement Amount for the STATE representing both the state and federal share of claims settled for the STATE's Medicaid program is \$43,603.21. The amount which shall be paid to the federal government pursuant to its agreement with WAL-MART is \$24,029.73 to settle that portion of the STATE's Medicaid claims which were federally funded. The amount which shall be paid to the STATE to settle that portion of the Medicaid claims which is state funded is \$19,573.48.
6. In consideration of this Agreement and payment set forth herein and subject to the exceptions from release (paragraph 8), the STATE shall release and forever discharge WAL-MART, its officers, directors, employees and agents, from any civil or administrative claims for damages or penalties that the STATE has or may have for claims submitted to the State Medicaid Program for the Covered Conduct as defined in paragraph C.
7. In consideration of the obligations of WAL-MART set forth in this Agreement, conditioned upon WAL-MART's payment in full of the Settlement Amount, and subject to paragraph 8 below, the STATE agrees to release and refrain from directing or maintaining any administrative claim or any action seeking exclusion from the STATE's Medicaid program against WAL-MART, its officers, directors, employees and agents, for the Covered Conduct, except as reserved in paragraph 8 below, and as reserved in this paragraph. Nothing in this

Agreement precludes the STATE from taking action against WAL-MART in the event that WAL-MART is excluded by the federal government, or for conduct and practices other than the Covered Conduct. WAL-MART acknowledges that the STATE does not have the authority to release WAL-MART from any claims or actions which may be asserted by private payors or insurers, including those that are paid on a capitated basis for providing health care to the State's Medicaid recipients.

8. Notwithstanding any term of this State Settlement Agreement, specifically reserved and excluded from the scope and terms of this State Settlement Agreement as to any entity or person (including, without limitation, WAL-MART) are any and all of the following claims of the STATE:

- (a) Any civil, criminal or administrative claims of the STATE arising under state tax codes;
- (b) Any criminal liability;
- (c) Any civil or administrative liability that WAL-MART has or may have under any state statute, regulation, or rule not covered by the release in paragraphs 6 and 7 above;
- (d) Except as explicitly stated in this State Settlement Agreement, any administrative liability, including mandatory exclusion from the STATE's Medicaid Program;
- (e) Any liability to the STATE (or its agencies) for any conduct other than the Covered Conduct.
- (f) Any claims based upon such obligations as are created by this State Settlement

Agreement;

- (g) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by WAL-MART;
- (h) Any civil or administrative claims against individuals, including current or former directors, officers, employees, agents or shareholders of WAL-MART who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct;

#### **MISCELLANEOUS PROVISIONS**

9. WAL-MART releases the STATE, and its agencies, employees, servants and agents from any claim [including attorneys' fees, costs and expenses of every kind and however denominated] which WAL-MART has asserted, could have asserted, or may assert in the future against the STATE, and its agencies, employees, servants and agents, related to the Covered Conduct alleged in paragraph C, and the STATE's investigation and prosecution thereof. WAL-MART, the United States and the STATE agree that the amount that WAL-MART has agreed to pay under the terms of this Agreement constitutes a compromise of the claims set forth in Paragraph 6 for the Covered Conduct is not punitive in effect or nature for purposes of such criminal prosecution or administrative action and does not constitute a criminal penalty or fine. Nothing in this paragraph or any provision of this Agreement constitutes a characterization of the Settlement Amount for purposes of the Internal Revenue Code or the tax code of the STATE.

10. The amount that WAL-MART must pay pursuant to this Agreement by electronic wire transfer pursuant to paragraph 1 above will not be decreased as a result of the denial of claims for payment now being withheld from payment by the STATE's Medicaid program related to the Covered Conduct, and WAL-MART agrees not to resubmit to the STATE's Medicaid program any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.
11. WAL-MART agrees that all costs (as defined in Federal Acquisition Regulations ("FAR") 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. 1395-1395ggg and 1396-1396v, and the regulations promulgated thereunder) incurred by or on behalf of WAL-MART, in connection with:
- i. The matters covered by this Agreement;
  - ii. The United States or the Participating States' investigation of the matters covered by this Agreement;
  - iii. WAL-MART's investigation, defense, and corrective actions undertaken in response to the United States' or the Participating States' investigation in connection with the matters covered by this Agreement (including attorney's fees and the obligations undertaken pursuant to the CIA incorporated in this Settlement Agreement);
  - iv. The negotiation of this Agreement and the CIA; and
  - v. The payment made pursuant to this Agreement,

are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program,

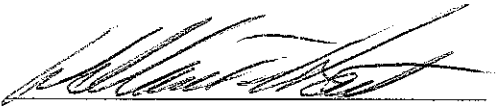
TRICARE, Veterans Affairs Program ("VA"), and FEHBP (hereinafter, "unallowable costs").

12. WAL-MART will not charge such unallowable costs directly or indirectly to any contracts with the United States or any of the Participating States' Medicaid programs, or seek payment for such unallowable costs through any cost report, cost statement, information statement or payment request submitted by WAL-MART to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.
13. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity except those identified in paragraphs 5-8.
14. WAL-MART agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors based upon the claims for payment covered by the Agreement. WAL-MART waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.
15. This Agreement is governed by the laws of the STATE.
16. This Agreement constitutes the complete agreement between the STATE and WAL-MART. This Agreement may not be amended except by written consent of the Parties.
17. The undersigned individuals signing this Agreement represent and warrant that they are authorized to execute this Agreement.
18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.



19. The Parties agree that they will execute and deliver all such other documents and instruments as may be necessary and appropriate to effectuate the terms of this Agreement.
20. This Agreement is effective on the date of signature of the last signatory to the Agreement, and is binding on successors, transferees, heirs, and assigns.


FOR THE STATE  
ATTORNEY GENERAL

BY: 

WILLIAM T. HART  
MEDICAID FRAUD CONTROL UNIT  
DIRECTOR

Date: 5-27-04

For the Medicaid Program of the STATE

\* BY: 

Date: May 5, 2004

FOR WAL-MART STORES, INC.

BY: Robin E Inkisi

TITLE: SVP Finance

DATE: 11/10/04

TLS

EXHIBIT A	
PARTICIPATING STATES	
Alabama	
Alaska	
Arizona	
Arkansas	
California	
Colorado	
Connecticut	
Delaware	
Florida	
Georgia	
Hawaii	
Idaho	
Illinois	
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	
Maryland	
Massachusetts	
Michigan	
Minnesota	
Mississippi	
Missouri	
Montana	
Nebraska	
Nevada	
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	
Ohio	
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	
Tennessee	
Texas	

Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

<b>EXHIBIT B</b>
<b>THRESHOLD STATES</b>
Alabama
Arizona
Arkansas
California
Colorado
Florida
Georgia
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Michigan
Minnesota
Mississippi
Missouri
Nebraska
New Mexico
New York
North Carolina
Ohio
Oklahoma
Oregon
Pennsylvania
South Carolina
Tennessee
Texas
Utah
Virginia
Washington
West Virginia
Wisconsin
Wyoming